

## Internal Revenue Service

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PLR-121197-19

Date:

November 25, 2019

### LEGEND

Trust =

Debtors =

Plan =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Dear :

This responds to a letter dated September 5, 2019, and subsequent correspondence, submitted on behalf of Trust, requesting a ruling regarding the classification of Trust as a liquidating trust under § 301.7701-4(d) of the Procedure and Administration Regulations.

### FACTS

The information submitted states that, beginning on Date1, and various dates thereafter, Debtors each filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court. On Date2, Plan was confirmed by the Bankruptcy Court and became effective Date3. Plan established Trust to facilitate the liquidation of the bankruptcy estate, along with two other liquidating trusts the assets of which included Beneficial Interests of Trust. The initial term of Trust was for five years. The Bankruptcy Court approved four successive one-year extensions of Trust, with the last extension ending on Date4.

Pursuant to the provisions of Plan and the trust agreement governing Trust, Trust was created for the purpose of prosecuting bankruptcy estate litigation claims on behalf of the holders of claims against Debtors. Pursuant to Plan, Trust was established to hold, prosecute, and liquidate the bankruptcy estate's causes of action and any objection right that is pending on the effective date and that relates to a common set of facts or legal issues also implicated by a bankruptcy estate cause of action, all for the sole purpose of liquidating and distributing the assets of Trust in accordance with § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

Under the trust agreement governing Trust, Trust shall not receive or retain cash in excess of a reasonable amount to meet claims and contingent liabilities or to maintain the value of the assets during liquidation. Cash not available for distribution and cash pending distribution will be held in cash, cash equivalents, U.S. Treasury securities, money market investments, and similar investments, but limited to those investments permitted under § 301.7701-4(d).

In addition, Trust is required, under the terms of the trust agreement governing Trust, to distribute to the beneficiaries of Trust at least annually its net income and all net proceeds from the sale of the assets of Trust, except that Trust may retain an amount of net proceeds or net income reasonably necessary to (i) maintain reserves for distributions to holder of Disputed Claims, (ii) meet contingent liabilities and maintain the value of the assets of Trust, (iii) pay or reserve for reasonable administrative expenses, or (iv) satisfy other liabilities incurred or assumed by Trust.

The trust agreement governing Trust provides that the beneficiaries of Trust will be treated as the grantors, deemed owners, and beneficiaries of Trust for federal income tax purposes consistent with the requirements of Rev. Proc. 94-45, 1994-2 C.B. 684. The trust agreement also provides that the trustee of Trust shall file tax returns as a grantor trust pursuant to § 1.671-4(a) of the Income Tax Regulations. The trust agreement further provides that the trustee will determine the fair market value of all assets transferred to Trust and use such values for all federal income tax purposes.

Consistent with the requirements set out in Rev. Proc. 94-45, Trust represents that the transfer of Trust assets to Trust has been treated for all federal tax purposes as

a deemed transfer by Debtors to the beneficiaries of Trust, followed by a deemed transfer by the beneficiaries to Trust.

Trust represents that, from its establishment, Trust has been formed and operated consistent with the conditions set out in Rev. Proc. 94-45. Trust further represents that it will make continuing efforts to liquidate the assets of Trust, make timely distributions, and not unduly prolong the duration of Trust. Trust also represents that certain continuing adversary proceedings have made it impossible to completely liquidate by Date4, the end of its fourth period of extension. The trust agreement governing Trust provides that the aggregate of all allowed extensions shall not exceed three years, unless the trustee receives a favorable ruling from the Internal Revenue Service ("Service") that any further extensions would not adversely affect the status of Trust as a liquidating trust under § 301.7701-4(d). Therefore, Trust requests a ruling that an extension of the term of Trust by an additional two years ending on Date5 will not adversely affect its status as a liquidating trust under § 301.7701-4(d).

### LAW AND ANALYSIS

Section 301.7701-4(d) provides that certain organizations which are commonly known as liquidating trusts are treated as trusts for purposes of the Internal Revenue Code. An organization will be considered a liquidating trust if it is organized for the primary purpose of liquidating and distributing the assets transferred to it, and if its activities are all reasonably necessary to, and consistent with, the accomplishment of that purpose. A liquidating trust is treated as a trust for purposes of the Code because it is formed with the objective of liquidating particular assets and not as an organization having as its purposes the carrying on of a profit-making business which normally would be conducted through business organizations classified as corporations or partnerships. However, if the liquidation is unreasonably prolonged or if the liquidation purpose becomes so obscured by business activities that the declared purpose of liquidation can be said to be lost or abandoned, the status of the organization will no longer be that of a liquidating trust.

Rev. Proc. 94-45 provides the conditions under which the Service will consider issuing advance rulings classifying certain trusts as liquidating trusts under § 301.7701-4(d). Rev. Proc. 94-45 states that the Service will issue a ruling classifying an entity created pursuant to a bankruptcy plan under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 1101, et. seq., as a liquidating trust under § 301.7701-4(d) if certain conditions are met.

Section 3.06 of Rev. Proc. 94-45 provides that the trust instrument must contain a fixed or determinable termination date that is generally not more than five years from the date of the creation of the trust and that is reasonable based on all of the facts and circumstances. If warranted by the facts and circumstances, provided for in the plan and trust instrument, and subject to the approval of the Bankruptcy Court with jurisdiction over the case upon a finding that the extension is necessary to the

liquidating purpose of the trust, the term of the trust may be extended for a finite time based on its particular facts and circumstances. The trust instrument must require that each extension be approved by the court within 6 months of the beginning of the extended term.

### CONCLUSIONS

Based on the information submitted and on the representations made, we conclude that the conditions of Rev. Proc. 94-45 have been satisfied. Accordingly, based on the representations made and the information submitted, we rule that an extension of time for the term of Trust to Date5 will not adversely affect the classification of Trust as a liquidating trust under § 301.7701-4(d) to the extent Trust otherwise qualifies as such.

Except as expressly set forth above, we express or imply no opinion concerning the federal income tax consequences of the facts described above under any other provision of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted as part of the ruling request, it is subject to verification on examination.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to Trust's authorized representatives.

Sincerely,

Adrienne M. Mikolashek  
Branch Chief, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter  
Copy for § 6110 purposes

cc: